THE HONOURABLE SRI JUSTICE B.SUDERSHAN REDDY

AND

THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.14220 OF 2005

Dated 3..08..2005

BETWEEN

M/s. K.Audi Sesha Reddy,

Mulapet,

Nellore represented by its proprietor

Sri K.Audi Sesha Reddy

..PETITIONER

AND

1. Commercial Tax Officer-II,

Nellore and others .. RESPONDENTS

THE HONOURABLE SRI JUSTICE B.SUDERSHAN REDDY

AND

THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

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WRIT PETITION NO.13875 OF 2005

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ORAL ORDER: (per Sri BRSR,J)

The petitioner invokes the extraordinary jurisdiction of this Court with a prayer to issue a writ of prohibition declaring the action of the 1st respondent in issuing the show cause notice dated 27.5.2005 as the one without authority of law and declare the circular instructions of the 2nd respondent in CCT's Ref.A1(2)/984/23-10-1998 as ultra vires the provisions of the APGST Act, 1957 (for short 'the Act').

During the course of hearing of this writ petition, learned counsel for the petitioner Sri Krishna Murthy himself brought to our notice the circular instructions issued by the Commissioner of Commercial Taxes, A.P. Hyderabad dated 8.1.2005 though not challenged in this writ petition, the relevant portion of which is to the following effect.

> "Hence the Deputy Commissioners are instructed to identify all cases wherein cement is included in G2 certificate and verify whether this is contrary to g.O.Ms.No.496 dated 17.7.2001. If so, action should be initiated as contemplated under 5B(2)(ii) of the Act. In other words, penal action can be initiated against the buyers who purchase cement and utilize the same for the purpose other than that mentioned in G.O.Ms.No.496 dated 17.7.2001."

In our understanding what all the Commissioner has directed
the Deputy Commissioners is to implement G.O.Ms.No.496 dated 17.5.2001 and accordingly directed them to verify all cases wherein cement is included in G2 certificate since any such inclusion would be contrary to G.O.Ms.No.496, Revenue dated 17.7.2001 wherein the Government directed that the goods mentioned thereunder are not eligible for concessional rate under Section 5-B of the said Act. Cement is one of the items so included in G.O.Ms.No.496 dated 17.7.2001. The Commissioner could not have but directed the Deputy Commissioners to implement the provisions of G.O.Ms.No.496 Revenue dated 17.7.2001.

Learned counsel for the petitioner Sri Krishna Murthy however further contended that the proposed action suggested by the Commissioner is contrary to Section 5-B of the Act. Suffice it to note, G.O.Ms.No.496 dated 17.7.2001 is not impugned in this writ petition. The question is, according to the learned counsel for the petitioner, as to the applicability of Section 5B(2)(ii) of the Act so far as the case of the petitioner is concerned. This question can always be raised by the petitioner in his reply to the impugned show cause notice. The impugned show cause notice cannot be said to be contrary to G.O.Ms.No.496 dated 17.7.2001 and the circular instructions issued by the Commissioner dated 8.1.2005. Therefore, neither the show cause notice nor the instructions suffer from any inherent lack of jurisdiction as such requiring this Court to issue a writ of prohibition.

For the aforesaid reasons, we find no merit in this writ petition and the same shall accordingly stand dismissed but without expressing any opinion whatsoever as to the applicability of

Section 5B(2)(ii) of the Act and the defence of the petitioner is left open to be raised by him, if he is so advised in the reply to be filed pursuant to the show cause notice. The time for submitting the show cause to the show cause notice. The time for submitting reply to the show cause notice is extended up to 20.8.2005. The Deputy Commissioner shall not refuse to receive the explanation on the ground that the time stipulated in the notice stood expired. He shall receive the same provided it is filed on or before 20.8.2005 for his consideration in accordance with law.

(B.SUDERSHAN REDDY,J)

DT.3.8.2005

(RAMESH RANGANATHAN,J)

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